Mauritania - 2005 Investment Climate Statement

1. This statement replaces the 2004 Investment Climate Statement for Mauritania. The 2004 statement appears as a chapter in the recently updated Country Commercial Guide.

A New Investment Code Approved in 2003

2. The 2002 Investment Code, which was published (in French and in English) in early 2003, is the principal official source for laws and information related to the country's investment regime. The new code is designed to encourage direct investment, facilitate administrative procedures, and enhance investment security. Direct investments are considered to be contributions in kind, labor, or capital that investors undertake, whether individuals or legal entities, and regardless of nationality, residence, or scale of the investment or enterprise (Art. 1).

Openness to Foreign Investment

3. The Mauritanian (MR) Government encourages foreign direct investment and economic liberalization. The government's investment and development policy emphasizes private sector development, seen as the main engine of economic growth. In line with ongoing World Bank/IMF structural reform programs, the government privatized several parastatals in the late 1990's, encouraging foreign investors to purchase shares. The orientation towards privatization and liberalization is expected to continue in 2005.

4. The new investment code has reorganized the legal and institutional framework, extending the capacity of the Consolidated Office for Investments -- a "One-Stop Investment Shop" (Guichet Unique) for potential investors. The creation of the "Guichet Unique" simplifies and facilitates:

- Applications for investment licenses
- Administrative formalities and procedures

-- Establishment of business enterprises
-- Acquisition of work permits for foreign nationals

5. Privatization, liberalization, and investment incentives have figured prominently in Mauritania's World Bank and IMF-inspired economic programs. The following are the legal guarantees now offered to any entity wishing to invest capital under the new investment code:

-- Freedom of establishment and capital investment, in accordance with the laws and regulations in place (Art. 3.1)
-- Freedom to transfer foreign capital (Art. 5.1)
-- The ability to transfer professional income of foreign employees (Art. 5.2)
-- The equal treatment of Mauritanian and foreign individuals and legal entities (Art. 6)

6. The new investment code applies to all sectors of the national economy, with the exception of the following sub-sectors (which are governed by other specific laws and regulations):

-- Purchasing for resale on the local market without further processing
-- Activities governed by the current legislation on banking regulations, except for leasing activities
-- Activities governed by the current regulations on insurance and reinsurance
-- Activities in the mining and hydrocarbons sectors
-- Communications and telecommunications (the latter still only partially liberalized)
-- Water and electricity supply

No Discrimination against Foreigners
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7. The Consolidated Investments Office (or One-Stop Shop) created in 1998, selects and recommends major investment projects to the Council of Ministers, whose meetings are chaired weekly by the President. Vendors for large, government-directed projects are usually selected through a tender process. After issuing an invitation to tenders, the Central Market Commission

("Commission Centrale des Marches") selects the offer that best fulfills Government requirements. The screening process, in principle, should be routine and non-discriminatory.

8. No sectors are closed to investment. The mining, fishing, banking, energy and tourism sectors actively seek foreign direct investment. The new investment code identifies activities eligible for the Duty-Free Zones Program ("Points Francs"), which guarantees certain advantages, such as exemption from export duties and taxes (Art. 8.1). This provides incentives for businesses that produce goods and services intended exclusively for export, and/or that develop exports of Mauritanian-manufactured products.

9. Foreign investors generally receive the same treatment as Mauritanian investors, subject to the provisions of treaties and agreements concluded by the Government with other countries (Art. 6.1, 6.2 and 6.3). Foreign investors have the same access as Mauritanians to courts of law (Art. 7.1). Nonetheless, the success of foreign investors will depend in large part on their successful collaboration with local partners who understand the local market and government. Contracts are protected by the civil and commercial codes, although court enforcement and dispute settlement can in practice be difficult to obtain.

10. With the exception of fishing boats (with respect to which foreign investment is limited to a 49 percent share), Mauritania has no discriminatory policies against foreign investment, imports, or exports. Mauritania is a signatory of the EU/ACP Lome Convention, which gives underdeveloped nations certain advantages and preferential treatment when exporting or importing some products to or from EU member countries. Mauritania is also a member of the Arab Maghreb Union, which was created in 1988 to work toward the political and economic integration of Algeria, Libya, Mauritania, Morocco, and Tunisia. Stated economic goals include a common market with a single currency, Maghreb-wide corporations, unified customs zones, and freedom of movement for capital and individuals.

11. In 1996, Mauritania became a member of the Multilateral Investment Guarantee Agency (MIGA), which protects direct foreign investment against political risks. Mauritania also has bilateral agreements with France, Belgium and Romania for investment promotion and protection. Other agreements exist with Burkina Faso, Cameroon, Gambia, Ghana, and Mauritius. Negotiations are underway for investment treaties with South Africa, Egypt, Italy and Malaysia.

Conversion and Transfer Policies
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12. There are no legal or policy restrictions on converting or transferring funds associated with an investment. Any investor is guaranteed the free transfer of convertible currencies at a legal market rate, subject to the availability of such currencies. Similarly, foreigners working in Mauritania are guaranteed the prompt transfer of their professional salaries. (Art. 5.2). In theory, the local currency, the ouguiya, is freely convertible within Mauritania. (It is illegal to export ouguiyas.) Hard currencies can be found, in principle, either in commercial banks or in private exchange offices. In practice, they may be difficult to obtain, and individuals and smaller companies may have to resort to informal markets, where foreign exchange may cost considerably more than the official rate (approx. 270 ouguiya to the dollar).

Expropriation and Compensation
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14. The new Investment Code ensures that, if the Government expropriates private property, the Mauritanian government will provide appropriate and prompt compensation, exempt from duties and taxes (Art. 4, 5.1). Only one government expropriation has occurred since independence: the takeover of the French mining company, MIFERMA, in November 1974. Compensation was paid by mutual agreement between the two parties. In 2003, the MR government annulled a major contract with a British company, covering national petroleum supplies and management of storage

and refining facilities in Nouadhibou. Again, compensation was negotiated and paid.

Dispute Settlement
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15. The Embassy is not aware of investment disputes over the past few years, except for the cancellation of the 2003 contract for petroleum supplies. Disputes between individuals or legal entities and the Government related to the investment code are settled by an arbitration procedure to which both parties have agreed, and in accordance with the following agreements (7.2):

-- The 1965 Convention on the Settlement of Disputes Related to Investments between States and Nationals of other States, also known as the Washington Convention
-- The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards
-- Other agreements and treaties that have been concluded between the government and the state of the concerned individual or legal entity and which address the protection of investments

16. Absent other arrangements between the parties, an ad-hoc arbitration court will be set up in accordance with the rules of arbitration of the United Nations Commission on International Trade Law (Art. 7.2.c.). Official mechanisms for enforcing property and contractual rights are Ordinance no. 89-126 creating the Contracts and Obligations Code; Law no. 99-035 creating the Civil, Commercial and Administrative procedure Code; and Law no. 2000-06 creating the Arbitration Code.

17. The country has a Commercial Code and related civil laws, but application and enforcement remain limited. The country does not have a bankruptcy law. The government accepts binding international arbitration of investment disputes between foreign investors and government authorities (see par. 14). In addition, there are domestic mechanisms for

arbitration, both through traditional religious institutions and through the courts.

Performance Requirements and Incentives

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17. As noted earlier, Mauritania is in a transitional stage with respect to application of its WTO commitments. The Government offers tax benefits, including exemptions in some instances, to enterprises in the priority sectors listed in its investment code. In the case of imported "dumped" goods, deemed to be competing unfairly with a priority enterprise, the Government will respond to industry requests for tariff surtaxes. Priority enterprises thus enjoy some potential protection from competition. During all or part of their first three years of operation, they can request that a tariff be levied on competing imported products. The Government is often willing to provide free land for industrial and farming investments.

18. There are no performance requirements beyond those that might be indicated in individual investment agreements. There are no requirements for local financing (except, again, with respect to fishing boats). There are some rules governing the percentage of host country nationals employed, but the Government is flexible on this point. Industrial fishing crews are encouraged to have, on average, five Mauritanian crewmembers per vessel. Foreign firms are encouraged to participate in government-financed research and development programs.

Right to Private Ownership and Establishment

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19. Mauritania guarantees any individual or legal entity wishing to undertake business activities on its territory the freedom of establishment in accordance with the laws and regulations in force (Art. 3.1 and 3.2). Private entities may freely establish and own business enterprises, and may engage in all forms of remunerative activity. Privatization and liberalization programs have also helped put private

enterprises on an equal footing with respect to access to markets and credit.

Protection of Property Rights

20. Property rights are protected under the Mauritanian civil code, which is modeled on the French one. However, biased application of the law by the Mauritanian judiciary has been a problem for some local companies. In practice, it can be difficult to gain redress of grievances through the courts. Mortgages exist, however, and are extended by the banks. There is a well-developed system of registration of property in land and real estate.

21. Mauritania is a member of the MIGA and the African Organization of Intellectual Property (OAPI). In joining the latter, member states agreed to honor intellectual property rights principles and to establish uniform procedures of implementation. These international agreements include the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Hague Convention for the Registration of Designs and Industrial Models, the Lisbon Convention for the Protection and International Registration of Original Trade Names, the World Intellectual Property Organization, the Washington Treaty on Patents, and the Vienna Treaty on the Registration of Trade Names. In addition, Mauritania signed and ratified the WTO TRIPS (Trade Role on Intellectual Property and Service agreement in 1994 but has not yet implemented it. The government has also signed and ratified the WIPO treaties in 1976.

Transparency of the Regulatory System

22. Privatization and liberalization have been underway since 1989. In the process, the Government has adopted laws that discourage anti-competitive practices and that authorize the creation of consumer interest groups. In 1999 the Government created an

"Autorite de Regulation," an agency charged with overseeing the privatization process.

23. As noted earlier, the Government established the Mauritanian Investment Window ("Guichet Unique ") in 1997 in order to streamline bureaucratic procedures for investment. This office has since been renamed the Consolidated Investments Office, and its services have expanded. Transparency has been improved and bureaucratic procedures reduced. Since 1998, this office has approved several industrial projects affecting different sectors of the economy.

Efficient Capital Markets and Portfolio Investment

24. Government policies encourage, in principle, the free flow of financial resources (see par. 12), and there are no restrictions on access by foreign investors. Most foreign investors, however, prefer external financing, due to the high interest rates and procedural complexities that prevail locally. Credit is often difficult to obtain, and dependent on special relationships with bank owners and officials. Capital assets of the largest banks could be estimated at about $7.5 million. Credit is quite restrictive, and the extent of bad loans is accordingly quite limited.

25. The government has emphasized banking sector reform. Considerable restructuring has occurred and, with the introduction of computerization, banking management has improved. Both the accounting system and regulations covering investments are based on the French model. Nevertheless, deficiencies persist in the enforcement of laws and regulations.

26. There is no stock market or other public trading of shares in Mauritanian companies. Companies are generally held by individual proprietors, family groups, and partnerships. They cannot be freely bought into by outsiders, and portfolio investment is accordingly quite limited.

Political Violence

27. There is minimal political violence in Mauritania. A failed coup attempt in June 2003 saw fighting between government and rebel forces, and there were further arrests of alleged military coup plotters in September-October 2004. There have otherwise been no public disturbances, and no violence has been directed against foreigners or economic installations. Small external opposition groups exist in neighboring countries, one of which, the "Knights of Change," has allegedly been linked to military dissidents, and allegedly financed by Libya and Burkina Faso. Mauritania has excellent relations, however, with the contiguous countries of Senegal, Mali, and Morocco.

Corruption
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28. Corruption exists at all levels of Mauritanian government and society. Wealthy business groups and government officials receive favors from authorities, while meager salaries foster corruption at lower levels. Mauritanian and non-Mauritanian employees at every level, and in every organization, routinely cheat on their taxes. The only exceptions to this are the employees of the Mauritanian government, whose income taxes are automatically deducted from their pay. This widespread cheating deprives the central government of a significant source of revenue, weakening the capacity of the government to supply services. Anti-corruption exist, but are not effectively enforced. Although the government has subscribed to a broad good governance program, giving or accepting bribes is still not considered a criminal act under current Mauritanian law. There have been some convictions for embezzlement, but giving and receiving favors, if occasionally sanctioned politically or administratively, is not formally punished by law.

29. Mauritania is not a signatory to the OECD Convention on Combating Bribery. However, no U.S. firm represented here has identified corruption as a major obstacle to foreign direct investment. Corruption is most pervasive in government procurement, bank loans, fishing license attribution,

land distribution, and tax payments. The Ministry of Justice and the Ministry of Interior are the two official entities tasked with combating corruption, but their activities are episodic. There is no systematic annual auditing of government accounts. The only international organization for transparency that operates in Mauritania is the Swiss-based SGS, confined to the inspection of imports. Mauritania has not so far subscribed to the Extraction Industry Transparency Initiative (EITI), although, as a nascent petroleum producer, it has been urged to do so by the World Bank and IMF.

Bilateral Investment Agreements
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30. Mauritania has bilateral investment agreements with member countries of the Arab Maghreb Union as well as with Saudi Arabia. In addition, Mauritania is a signatory to the Cotonou Agreement between the European Union (EU) and the group of African, Caribbean and Pacific (ACP) countries, and thus enjoys free access to the EU market. As a least- developed country, Mauritania benefits from duty-free access to the European market under the Everything-But-Arms initiative. Since 1987, the Government has signed three fishery agreements with the European Union, the last covering the period 2001-2006. Mauritania has no bilateral investment or taxation treaties with the United States.

OPIC and Other Investment Insurance Programs
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31. Mauritania currently qualifies for OPIC coverage, but its program is very limited. Potential investors should contact OPIC directly for guidance. A British-Mauritanian insurance company -- Atlantic Londongate -- offers broad commercial coverage. As noted earlier, Mauritania is a member of the Multilateral Investment Guarantee Agency (MIGA).

Labor
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32. There is a shortage of skilled workers and well-trained technical/managerial personnel in most sectors of the economy apart from mining. However, professional training centers exist in Nouakchott and Nouadhibou; any company or Government agency interested in improving its employees’ skills can do so. Mauritania’s population is quite young, with 64 percent of its citizens under 25. Government sources estimate that unemployment for males over 18 runs as high as 35 percent. There are unrealistically high expectations of employment in the nascent petroleum sector, where the leading company, Woodside (Australia), is making an effort to train and use local personnel as much as possible.

33. Mauritania is a signatory of the ILO Convention. In consultation with the country's three labor confederations and the employers’ federation, the Government issues laws governing employer-employee relations in the public and private sectors. The most recent agreement, the 1974 Collective Labor Convention, established a broad array of employee benefits, including paid maternity leave. The original labor code of 1963 is still in force. Expatriate employment requires a work permit, renewable every year, from the Ministry of Labor.

34. The minimum wage statute is based on a system of job classification defined in the labor code. These wage rates are revised periodically after agreement between the labor and employers’ unions and the Government. The most recent increase, in January 2005, set the minimum wage at 18,662 Ouguiya (USD 69) per month. The minimum wage is now about 20,000 Ouguiya (USD 75) per month in the informal sector, and 30,000 ouguiya (USD 111) in the private sector.

Foreign Trade Zones/Free Ports
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35. There are no duty-free import zones. However, the new investment code has introduced for the first time areas called Duty-Free Points ("Points Francs") for the exclusive use of designated exporting companies (Art. 8).

Foreign Direct Investment Statistics
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36. Mauritania is reported to have received USD 117.6 million in foreign direct investment in 2002 [sources: Central Bank of Mauritania and IMF Country Report 2003]. This figure is estimated at USD 214.5 for 2003. Exploration for (and now exploitation of) hydrocarbon deposits and other minerals are the major areas of investment.

37. Major foreign direct investments

Major foreign private investors in Mauritania include the following:

LOCAL AFFILIATE	FOREIGN PARENT	NATIONALITY
AGS (moving & storage)	AGS France	France
CGA (vehicle sales)	N/A	Japan
Grands Domaines de Mauritanie (agriculture)	N/A	France
Mercure Hotel	Accor Group	France
NOVOTEL Hotel	Accor Group	France
ORYX-Mauritanie (fuel imports/sales)	ADDAX & Oryx	Switzerland
SIPECO (fish)	Ifafood	France
MAFCI (cement)	N/A	France
SODIAP (fish)	Potarg	Ireland
Famo-Mauritanie (food prod's)	N/A	Switzerland
Rex Diamond	Rex Diamond Belgique	Belgium
M.C.P. (fish)	CNF	China
DHL	DHL	Germany
Mattel	Tunisie Telecom	Tunisia
Mauritel Mobiles	Maroc Telecom	Morocco
TOTAL-Mauritanie (oil exploration	TOTAL Oil	France

& distribution)		
SMP Atlas (hydrocarbons)	Atlas	Morocco
Grands Moulins (flour)	ACODIS	France
NAFTEC (hydrocarbons)	NAFTAL	Algeria
Woodside-Mauritania	Woodside Resources	Australia
Dana Petroleum	Dana	Scotland
Maersk (maritime shipping)	Maersk	Denmark
B.H.P.	B.H.P. Minerals	Australia
SOGECO (freight & handling)	SAGA Group	France
Hardman Resources	Hardman Resources	Australia
UPS	UPS	U.S.A.
CODIMEX	TOYOTA	Japan
S.G.S.-Mauritanie	SGS	Switzerland
Sinergie	Sinergie-Belgique	Belgium
Thani Investment (mining)	Thani Investment	United Arab Emirates
Diamet Minerals	Diamet Minerals	South Africa
Schenker	Schenker	German

LeBaron